IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

WP(C).No. 17213 of 2006(Y)
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CMA.79/2005 of ADDL.DISTRICT COURT, KOZHIKODE
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PETITIONER:
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V.P.K.ABDULLA HAJI, AGED 67 YRS,
S/O. MOHAMMED, MANAGING DIRECTOR,
V.P.K. MOTORS, RESIDING AT ZAREENA MANZIL,
VELIPRAM AMSOM, KARINKALLAYI DESOM,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.M.P.MOHAMMED ASLAM

RESPONDENTS:
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1. K.NASEEMA, AGED 32 YRS,
D/O. KUNHIMUHAMMED HAJI, IRINGANNOOR AMSOM
AND DESOM OF VADAGARA TALUK,
KOZHIKODE DISTRICT.

2. K.FAUSIYA, AGED 30 YRS,
D/O. K.KUNHIMUHAMMED HAJI,
NOOR MAHAL, P.O.MAHI.

3. K.HASEENA, AGED 25 YRS,
D/O. K.KUNHIMUHAMMED HAJI,
NOOR MAHAL, P.O.MAHI.

4. ACHANKANDI KHADEEJA, AGED 59 YRS,
W/O. LATE K.KUNHIMUHAMMED HAJI,
VILADAPURAM AMSOM, MUTHUVADATHOOR DESOM OF
VADAGARA TALUK.

5. A.K.ABDUL AZEEZ, AGED 48 YRS,
S/O. LATE KUNHIMUHAMMED HAJI,
VILADAPURAM, MUTHUVADATHUR, VATAKARA TALUK,
KOZHIKODE DISTRICT.

6. A.K.FAISAL, AGED 38 YRS,
S/O. LATE KUNHIMUHAMMED HAJI,
APPAM KANDIYIL, VILADAPURAM, MUTHUVADATHUR,
VATAKARA TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.P.K.YUSUFF ISSUDDIN
SRI.PULIKKOOL ABUBACKER
SRI.ZUBAIR PULIKKOOL
SRI.N.L.KRISHNAMOORTHY
SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE PLAINT IN OS NO.319/04 OF THE 1ST ADDITIONAL SUB COURT, KOZHIKODE.

EXT.P2 : TRUE COPY OF THE REGISTERED DOCUMENT DATED 13.02.1978.

EXT.P3 : TRUE COPY OF THE DOCUMENT DATED 13.02.1978.

EXT.P4 : TRUE COPY OF THE PARTNERSHIP DEED DATED 22.05.1987.

EXT.P5 : TRUE COPY OF THE PARTNERSHIP DEED DATED 03.03.2001.

EXT.P6 : TRUE COPY OF THE WRITTEN STATEMENT FILED BY PETITIONER IN OS 319/04 BEFORE THE 1ST ADDL. SUB COURT, KOZHIKODE DATED 10.01.2005.

EXT.P7 : TRUE COPY OF THE AFFIDAVIT FILED BY RESPONDENT NO.1 IN IA 1901/2005 IN OS 319/04 BEFORE THE 1ST ADDL. SUB COURT, KOZHIKODE DATED 27.06.05.

EXT.P8 : TRUE COPY OF THE COMMON JUDGMENT OF THE 1ST ADDL. DISTRICT JUDGE, KOZHIKODE IN CMA NOS.78/05 & CMA 79/05 DATED 16.01.06.

**PIUS C. KURIAKOSE, J.**

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W.P.(C) No. 17213 OF 2006

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Dated this the 16th day of August, 2007

**JUDGMENT**

Heard both sides. Impugned in this Writ Petition under Article 227 is Ext.P9 common judgment of the learned District Judge in two CMAs preferred against the orders in IA Nos.1901of 2005 and 1902 of 2005.

Even though several attractive grounds have been raised in this Writ Petition, and Sri.M.P.M.Aslam, counsel for the petitioner addressed me on all those grounds, I do not think that it is possible to say that Ext.P9 judgment is vitiated to such an extent as to justify interference by this Court under Article 227, which is visitorial in nature and will be invoked only in exceptional circumstances. I dispose of the Writ Petition directing the learned First Additional Subordinate Judge, Kozhikode to try and dispose of OS No. 319 of 2004, uninfluenced in any manner by the findings which have been entered in Ext.P9 common judgment and also orders in IA Nos.1091 of 2005 and 1092 of 2005. Decision in the suit will be taken by the learned Subordinate Judge on the evidence which comes on record during the trial and treating the findings in CMA judgment and the interlocutory orders passed in IA Nos. 1091 of 2005 and 1092 of 2005 as provisional and made only for the purpose of the interlocutory proceedings. The learned Subordinate Judge will special

list the suit for trial in the earliest available special list and dispose of the suit at the earliest and at any rate within three months receiving a copy of this judgment.

**PIUS C. KURIAKOSE, JUDGE**

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